



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/563,493 | 01/04/2006 | Philippe Chavignac | SAIME 3.3-001 | 8275 |
| 530 7590 05/26/2010 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090 | | | | |
| EXAMINER THANH, QUANG D | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3771 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 05/26/2010 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,493

Applicant(s)

CHALVIGNAC, PHILIPPE

Examiner

Quang D. Thanh

Art Unit

3771

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7, 9, 10 and 12-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 9-10, 12-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- Paper No(s)/Mail Date ____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

1. This office action is responsive to the amendment filed on 2/18/2010. As directed by the amendment: claims 1 and 7 have been amended, new claim 21 has been added. Thus, claims 1-4, 7, 9-10, 12-21 are presently pending in this application.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-2, 7, 9-10, 12-14 and 18-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik et al. (US 2003/0172930 A1).

4. Regarding claims 1 and 21, Kullik et al. discloses a device comprising: a source of respiratory pressurized gas wherein gas source is a ventilator (3) having at least an inlet rotor ([0015], "blades") and a motor ([0016]); a breathing connection (2) for allowing the patient to receive pressurized gas; at least one sensor (10) for acquiring a parameter representative of the operation of the device; a central control unit (6) for operating the device in at least one airway pressure ventilation mode based on information from said at least one sensor ([0018]), a removable module 3 (figs. 1-2) removably connectable to the breathing connection, said removable module comprising a first part and a second part (fig. 2), wherein said ventilator is integrated into the first part of the removable module 3 (figs. 1-2), wherein the breathing connection is a mask (2) such that the removable module is directly connectable to the mask (fig. 2). Kullik does not disclose that the sensor is contained in the second part of the removable module at a position downstream of the first part of the removable module and

downstream of the inlet rotor and in the vicinity of the motor of the ventilator. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sensor located at a position downstream of the first part of the removable module and downstream of the inlet rotor and in the vicinity of the motor of the ventilator, for the purpose of allowing the control unit to be actuated as a function of the measured signals of the respiratory flow sensor, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

5. Regarding claim 2, Kullik et al. discloses a removable module comprising a pressure sensor of respiratory gas and a flow sensor ([0018]).
6. Regarding claim 7, Kullik discloses in figure 2, the mask (2) is a no-vented mask.
7. Regarding claims 9 and 10, Kullik discloses in fig. 2 an ensemble formed by the breathing connection and the removable module is linked with a link (4) to a control console (6) of the device integrating the central control unit ; wherein said link (4) allowing data to be transmitted between the ensemble and the central control unit (see para. 16).
8. Regarding claim 12, Kullik discloses a link (4) helping to convey energy (5) required to operate components of the removable module from the console to the ensemble (see para. 16).
9. Regarding claim 13, Kullik discloses a link (4) being a wired link (Figure 1).
10. Regarding claim 14, Kullik discloses a ventilator being an axial ventilator (see para. 14, lines 11-13).

11. Regarding claim 18-19, the device of Kullik is capable of performing in a BPAP or CPAP mode, depending on the need of the user since Kullik's device comprises controller for controlling the pressure and speed of the ventilator motor (see para. 19).

12. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik in view of Chen (20030066527). Kullik discloses the claimed invention except for the removable module is fixable on the device or on the mask by a removable connection or fastening means. However, Chen teaches a removable connection comprising a thread pitch on the fastener (54) (see figure 5). 19). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Kullik's device to include a removable connection as taught by Chen for the purpose of providing easier removable of the module.

13. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik et al. in view of Jay (6050262).

14. Regarding claim 15, Kullik does not expressly disclose the rotor of the axial ventilator being a single staged. However, Jay teaches a removable module (8) with a single stage rotor (10) (see figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the module of Kullik with a module comprising a single stage rotor as taught by Jay for easier manufacturing.

15. Regarding claim 16, the modified reference of Kullik discloses (see figure 1-2 of Jay) the input (28) and output (6) of respiratory gas being substantially parallel (see arrow in figure 2).

16. Regarding claim 17, the modified reference of Kullik discloses (see figure 2 of Jay), an input (28) substantially aligned with an axis of rotation of a rotor (10) of the ventilator (8), an outlet (18) allowing flux generated by rotor to be collected according to an oblique direction relative to axis of rotation (see airflow in Figure 2), and means for rectifying flux that is generated and collected, so that the generated and collected flux flows out of the ventilator in a general direction substantially parallel to axis of rotation of the rotor of the ventilator (see the airflow coming out of connector (6) in Figure 2).

17. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kullik in view of Frank et al. (US 6467477). Kullik does not expressly disclose a wireless link. However, Frank teaches that it is well known in the art to use wireless link (col. 5, lines 50-53) for providing communication between the controller and the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Kullik to include such wireless link as taught by Frank in order to allow the user to operate the device unencumbered by wires as desired.

Response to Arguments

18. Applicant's arguments with respect to claims 1-4, 7, 9-10, 12-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang D. Thanh/
Primary Examiner, Art Unit 3771